

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
OMEGA PROTEIN, INC.  
VPDES VA0003867**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Omega Protein, Inc., for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Omega Protein” means Omega Protein, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the Omega Protein Wastewater Treatment Plant located in Reedville, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means VPDES permit No. VA0003867, which became effective December 17, 1997, and expired December 17, 2002. The permit has been administratively continued.
10. “O&M” means operations and maintenance.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Omega Protein owns and operates a wastewater treatment facility in Northumberland County, Virginia. This facility is the subject of VPDES permit VA0003867, which allows Omega Protein to discharge treated wastewater into Cockrell’s Creek and the Chesapeake Bay in strict compliance with terms, limitations and requirements outlined in the Permit.
2. Omega Protein has reported effluent violations of cyanide, ammonia, BOD, and toxicity on discharge monitoring reports for the June through December 2002 monitoring periods. In addition, a review of the facility files indicate that Omega Protein failed to sample and submit results for total phosphorous and total nitrogen on the May 2002 discharge monitoring report.
3. The Department issued NOVs for the majority of the above referenced violations to Omega Protein on September 2 and October 2, 2002.
4. Omega Protein met with the Department on October 7, 2002, to discuss the violations and the issuance of this Consent Special Order. Omega had previously installed a diffuser on outfall 006, in the spring of 2002, and applied for a permit modification to incorporate the treatment change. At the time, the Permit was six months from expiring. At Permit reissuance, the limits for ammonia and cyanide will change, based on the change in treatment process. The limits, as recalculated will be less stringent limitations for ammonia and cyanide. If the recalculated limits had been in effect for 2002 a number of the effluent exceedances for ammonia and cyanide would not have occurred. This was taken into account in determining the appropriate civil charge. Corrective action for ammonia is not required because there was one isolated ammonia exceedance at outfall 002 and one at outfall 006 when the recalculated limits are taken into account.
5. A recent Department inspection of the facility revealed that the lagoon at outfall 002 was seeping. Omega agreed to correct the problem and immediately hired a contractor to develop a lagoon repair plan.

6. In February 2003 the Department performed a review of Omega Protein's toxicity data for 1998 through 2002. The Department discovered that 4 out of 6 acute toxicity tests for outfall 001/006 were invalid because the tests did not meet the required holding time and the wrong organism was used for testing. Omega does not have its own laboratory and contracts toxicity testing out to a private lab. Omega's reissued permit will increase the frequency of toxicity.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Omega Protein, and Omega Protein agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Omega Protein, and Omega Protein voluntarily agrees, to pay a civil charge of \$11,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Omega Protein. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Omega Protein, for good cause shown by Omega Protein, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. In the interest of resolving this matter without additional delay and expense of litigation Omega Protein agrees to entering into this Consent Order, but neither admits nor denies the Findings of Fact or the Conclusions of Law contained herein.
4. Omega Protein consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Omega Protein declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Omega Protein to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Omega Protein shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Omega Protein shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Omega Protein shall notify the DEQ Piedmont Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the DEQ Piedmont Regional Office within 24 hours of learning of any condition above, which Omega Protein intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Omega Protein. Notwithstanding the foregoing, Omega Protein agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Omega Protein. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Omega Protein from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Omega Protein voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Omega Protein voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of

\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Omega Protein, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

Omega Protein shall:

1. On or before March 1, 2003, submit to the Department for its review and approval, a corrective action plan with an expeditious schedule of implementation for the repair of the seeping lagoon.
2. Within sixty (60) days of the effective date of this Order, submit to the Department for its review and approval, a study plan with an expeditious schedule of implementation for a source assessment of cyanide in Cockrell's Creek.
3. Within ninety (90) days of the effective date of this Order, submit to the Department for its review and approval, a corrective action plan with an expeditious schedule of implementation detailing the steps to be taken to comply with the Permit's amended cyanide limitation.
4. Within thirty (30) days of the commencement of effluent discharge in the spring of 2003, sample outfall 001 for acute toxicity and submit the results to the Department.

**Pursuant to this Order** communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060

Omega Protein shall confirm, in writing, completion of the Order's requirements to the above address **within five (5) days of completion**. Any plans or schedules submitted as part of this Order, once approved by the Department shall become an enforceable part of this Order.